

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.*)
JOHN DONALDSON, and THE STATE OF)
ILLINOIS by and through ILLINOIS)
ATTORNEY GENERAL LISA MADIGAN,)

Plaintiffs,)

v.)

OPEN ADVANCED MRI OF CHICAGO, LLC;)
OPEN ADVANCED MRI OF TINLEY PARK,)
LLC; OPEN ADVANCED MRI OF CRYSTAL)
LAKE, LLC; OPEN ADVANCED MRI OF)
ROUND LAKE, LLC; OPEN ADVANCED MRI)
OF PLAINFIELD, LLC; OPEN ADVANCED)
MRI OF LINCOLN PARK, LLC; OPEN)
ADVANCED MRI OF DEER PARK, LLC; OPEN)
ADVANCED MRI OF SKOKIE, LLC; GOLD)
COAST MRI AT WASHINGTON SQUARE,)
LLC; OPEN ADVANCED MRI OF NORTH)
SHORE, LLC; OPEN ADVANCED MRI OF OAK)
BROOK, LLC; OPEN ADVANCED MRI OF)
WHEATON, LLC; OPEN ADVANCED MRI OF)
SCHAUMBURG, LLC; ADVANCED IMAGING)
OF DEERFIELD, LLC; MIDI, LLC; MIDI II,)
LLC; and MIDI IIA, LLC,)

No. 07 CH 36945

Defendants.)

CONSENT DECREE

WHEREAS, the PEOPLE OF THE STATE OF ILLINOIS, by and through LISA MADIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS and Relator JOHN DONALDSON have filed a Complaint against OPEN ADVANCED MRI OF CHICAGO, LLC; OPEN ADVANCED MRI OF TINLEY PARK, LLC; OPEN ADVANCED MRI OF CRYSTAL LAKE, LLC; OPEN ADVANCED MRI OF ROUND LAKE, LLC; OPEN ADVANCED MRI OF PLAINFIELD, LLC; OPEN ADVANCED MRI OF LINCOLN PARK, LLC; OPEN ADVANCED MRI OF DEER PARK, LLC; OPEN ADVANCED MRI OF SKOKIE, LLC; GOLD COAST MRI AT WASHINGTON SQUARE, LLC; OPEN ADVANCED MRI OF NORTH SHORE, LLC; OPEN ADVANCED MRI OF OAK BROOK, LLC; OPEN ADVANCED MRI OF WHEATON, LLC; OPEN ADVANCED MRI OF SCHAUMBURG, LLC; ADVANCED IMAGING OF DEERFIELD, LLC; MIDI, LLC; MIDI II, LLC; and MIDI IIA, LLC (collectively, "MIDI"), pursuant to the Insurance

Claims Fraud Prevention Act, 740 ILCS 92/1 *et seq.*, the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*; the Illinois Whistleblower Reward and Protection Act, 740 ILCS 175/1 *et seq.*, and the Attorney General's common-law powers and duties, which case is now pending in the Circuit Court of Cook County, Illinois, under Case Number 07 CH 36945;

WHEREAS this Court has jurisdiction over the subject matter and over the parties herein, namely defendant MIDI and plaintiffs the PEOPLE OF THE STATE OF ILLINOIS *ex rel.* JOHN DONALDSON.

WHEREAS LISA MADIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, as the chief legal officer for the state, has primary authority and responsibility for enforcement of the Insurance Claims Fraud Prevention Act, the Consumer Fraud and Deceptive Business Practices Act and the Whistleblower Reward and Protection Act;

WHEREAS, Relator, JOHN DONALDSON, originally filed an action against MIDI in the Circuit Court of Cook County, Illinois, Chancery Division, Case Number 06 CH 02513, into which suit LISA MADIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, subsequently intervened and which suit LISA MADIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS thereafter voluntarily dismissed without prejudice against MIDI and thereafter refiled the above-referenced Complaint under Case Number 07 CH 36945;

WHEREAS, MIDI on or about July 8, 2008, filed an Answer and Affirmative Defenses to the Complaint in Case Number 07 CH 36945, denying all material averments directed against it claiming alleged wrongdoing on MIDI's part;

WHEREAS, MIDI and LISA MADIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS and Relator JOHN DONALDSON have determined that it is in their mutual best interests to resolve their dispute in order to avoid the expense, delay, uncertainty and distraction that protracted, complex litigation would involve;

WHEREAS, MIDI represents that it has conducted a diligent search of its records and has produced, to its best knowledge and belief, all information requested by LISA MADIGAN, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, by subpoena during the investigation and litigation of this matter, and has not knowingly withheld or otherwise failed to produce any evidence or information requested by the Attorney General;

WHEREAS, MIDI represents that since January 1, 2001, in Illinois, MIDI has entered into technical services agreements with physicians or physician practice groups with whom it agreed to provide access to its imaging facilities in return for payment.

WHEREAS, the Parties (consisting collectively of People of the State of Illinois, Lisa Madigan, Illinois Attorney General, MIDI and Relator, John Donaldson) (collectively, the "Parties") to this Consent Decree recognize that the Consent Decree is a settlement of a contested matter and that participation in the settlement does not constitute or represent in any

fashion any admission of law or fact by any party, nor does it constitute or represent any acknowledgement of any alleged wrongdoing on the part of MIDI;

WHEREAS, by their respective undersigned representatives, the Parties, having agreed that settlement of this matter has been negotiated by the parties in good faith and that this Consent Decree is fair, reasonable, consistent with applicable law and in the public interest, and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter;

WHEREAS, in consideration of the mutual covenants and undertakings set forth in this Consent Decree as defined herein, the Parties enter into this Consent Decree and agree to and understand the terms of this Consent Decree set forth herein.

NOW, THEREFORE, before taking any testimony, without adjudication, of any issues of fact or law, and upon consent and agreement of the parties to this Consent Decree, it is hereby **ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

1. **Incorporation of Recitals:** The Preamble and Recitals contained in this Consent Decree shall be deemed incorporated by reference herein as if fully made a part of this Consent Decree.

2. **Payments by MIDI:** In full and final settlement of this matter, including but not limited to Case Numbers 07 CH 36945 and 06 CH 02513 (including any and all claims to attorneys' fees and/or costs of the Relator therein), MIDI shall make the following payments:

A. To the Office of the Illinois Attorney General a total of Eight Hundred Forty Thousand Dollars and No Cents (\$840,000.00), to be deposited into the Attorney General State Projects and Court Ordered Distribution Fund for the purpose of *cy pres* distribution to benefit low-income persons in need of health care services. Payments shall be made according to the following schedule:

- (i) MIDI shall pay \$700,000 within 120 days of execution of the Consent Decree by wire transfer per instructions;
- (ii) MIDI shall pay the remaining \$140,000 no later than 24 months from the date of the \$700,000 payment in ¶ 2(a)(i) above; and

B. MIDI shall pay jointly to the Relator, John Donaldson and the law firm of Ungaretti & Harris, a total of Four Hundred Twenty Thousand Dollars and No Cents (\$420,000.00), as follows:

- (i) MIDI shall pay \$360,000 within 120 days of execution of the Consent Decree by wire transfer, per instructions;
- (ii) MIDI shall pay the remaining \$60,000 no later than 24 months from the date of the \$360,000 payment in ¶ 2(B)(i) above.

The payments in ¶ 2(B)(i) and (ii) above shall exhaust all claims that Relator John Donaldson may have against any funds received under this settlement, including but not limited to any claims for attorneys' fees or costs.

3. **Continued Cooperation of MIDI:** MIDI agrees to waive the requirement of the service of subpoenas and agrees to respond to discovery requests in the same manner as any other party to litigation.

4. **Injunction:** MIDI is enjoined in Illinois from knowingly paying or offering to pay any remuneration directly or indirectly, in cash or in kind, to induce any person to procure or refer clients or patients to obtain services or benefits under a contract of insurance or that may be the basis for a claim against an insured person or the person's insurer. MIDI further agrees that it will not use any device or scheme to permit it to pay or offer to pay remuneration directly or indirectly, in cash or in kind, to induce referral of patients to MIDI, including but not limited to:

(a) entering into or operating under a lease agreement, technical services agreement, MRI services agreement, or any other agreement, written or unwritten, whereby a referring doctor leases MIDI's space, equipment and personnel, or purchases imaging services, for a fee that is less than the amount the physician or MIDI bills the patient or the patient's insurer for those services;

(b) offering a paid medical directorship to a doctor in a position to refer patients to MIDI; or

(c) entering into any other type of agreement, written or unwritten, whereby a referring doctor receives any type of remuneration or consideration, directly or indirectly, as a result of referring patients to MIDI or any entity affiliated with MIDI.

5. **Enforcement of Consent Decree by the State of Illinois:** If at any time subsequent to the entry of this Consent Decree, MIDI violates the injunction provided in paragraph 4 herein, in any material manner or degree, the State of Illinois shall, upon showing of such violation before the Circuit Court of Cook County, Illinois, with reasonable advance due notice being given to MIDI of such claimed material violation, which notice enables MIDI an opportunity to be heard and defend itself, be entitled to any and all applicable judgments, forfeitures, fines and penalties as proven and as provided for under one or more of the provisions of the Insurance Claims Fraud Prevention Act (740 ILCS 92/1 *et seq.*), the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.*) and/or the Whistleblower Reward and Protection Act (740 ILCS 175/1 *et seq.*) upon due notice and hearing accorded to MIDI as provided herein. Additionally, the State of Illinois shall be entitled to any other and further relief as the Court deems appropriate for said proven material violations, including but not limited to fines for contempt of court upon such notice and hearing to MIDI as provided by law. The Relator, John Donaldson, shall not be entitled to invoke the provisions of paragraph 5 or the relief or remedies contained therein.

6. **Dismissal Of Pending Matters With Prejudice:** All claims and causes of action alleged against MIDI in Case Numbers 07 CH 36945 and 06 CH 02513 are hereby dismissed

with prejudice in their entirety, each party to bear its own costs and attorneys' fees except as otherwise provided herein.

7. **Covered Conduct and Releases:**

a. **Covered Conduct:** The State of Illinois and Relator contend that they have certain civil claims against MIDI for engaging in the following conduct during the period from January 1, 2001 to the date this Consent Decree is entered by the court: MIDI entered into Agreements with Referring Physicians by which MIDI allowed the Referring Physicians to bill patients, insurers and the State of Illinois for services performed by MIDI in an amount exceeding what the Referring Physicians paid to MIDI, in violation of the Insurance Claims Fraud Prevention Act (740 ILCS 92/5), the Consumer Fraud Act (815 ILCS 505/2) and the Whistleblower Reward & Protection Act (740 ILCS 175/3) (the "Covered Conduct").

b. **State of Illinois' Release as to MIDI:** In consideration of the obligations of MIDI in this Consent Decree, conditioned upon MIDI's adherence to the Injunction provisions contained in Paragraph 4 above, the State of Illinois, on behalf of itself, its officers, agents, servants, employees, agencies, and departments, releases MIDI, its current and future parents, subsidiaries, members, predecessors, successors, affiliates, directors, executives, officers, managers, employees, attorneys, agents, assigns, transferees, and heirs from any and all civil or administrative monetary claims the State of Illinois has or may have for the Covered Conduct under state law, including any and all civil or administrative monetary claims for the Covered Conduct which may have been filed under seal in the Circuit Court of Cook County prior to the date of this Consent Decree.

c. **Preservation of Law Enforcement Actions:** Notwithstanding any term of this Consent Decree, specifically reserved and excluded from the scope and terms of the Releases specified herein, as to any entity or person (including MIDI and Relator) are the following:

- i. Any civil, criminal, or administrative liability arising under Chapter 35 of the Illinois Compiled Statutes or any regulations promulgated under the authority of any statute contained therein;
- ii. Any criminal liability;
- iii. Any liability to the State of Illinois or its agencies for any conduct other than the Covered Conduct; and
- iv. Any liability based upon such obligations that are unfulfilled as are created by this Consent Decree.

d. **Relator's Release as to the State of Illinois:** Relator and his successors, heirs, agents, transferees, and assigns agrees and confirms that this Consent Decree is fair, adequate and reasonable under all circumstances and, conditioned upon receipt of Relator's share as set forth in Paragraph 2(B) above, Relator for himself individually, and for his heirs, successors, agents and assigns, fully and finally releases, waives and forever discharges the State of Illinois, its officers, agents and employees from any claims arising

from or relating to the Covered Conduct, from any claims arising from the filing of the Complaint, and from any claims for a larger share of the Settlement Amount; or any claims Relator may have under this Consent Decree. This Consent Decree does not resolve or in any manner affect any claims the State of Illinois has or may have against Relator arising under Chapter 35 of the Illinois Compiled Statutes or any claims arising under this Consent Decree.

e. **MIDI's Waiver:** MIDI waives and shall not assert any defenses MIDI may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or any comparable provision in Article 1, Section 10 of the Illinois Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, or any comparable provision in Article 1, Section 11 of the Illinois Constitution, this Consent Decree bars a remedy sought in such criminal prosecution or administrative action.

f. **MIDI's Release as to the State of Illinois:** MIDI fully and finally releases the State of Illinois and its officers, agents, servants, employees, agencies, and departments from any claims, including attorney's fees, costs and expenses of every kind, however denominated, that MIDI has asserted, could have asserted, or may assert in the future against the State of Illinois or its officers, agents, employees, agencies, and departments, related to or arising from the State of Illinois' investigation and prosecution of the Covered Conduct up to the date this Consent Decree is entered by the court.

g. **Relator's Release as to MIDI:** Upon payment pursuant to Section 2 B of this Consent Decree, Relator John Donaldson, and his successors, heirs, administrators, executors, agents, attorneys, transferees and assigns (collectively referred to as "Relator") hereby fully and finally releases, waives and forever discharges for himself, individually, and on behalf of his heirs, executors, administrators, successors, attorneys and assigns, MIDI, as it is collectively referred to and defined herein, together with MIDI's current and future officers, agents, servants, employees, parents, subsidiaries, members, predecessors, successors, affiliates, directors, executive members, officers, attorneys, transferees and/or heirs, executors and administrators of and from any and all claims Relator has or may have or could have asserted or may assert in the future against MIDI, as collectively referred to and defined herein, arising out of or relating to the Covered Conduct, Case Nos. 06 CH 02513 and 07 CH 36945, and regardless of whether any such claims or causes of action were actually brought, dismissed or withdrawn therein or would or could have been brought therein.

h. **MIDI's Release as to Relator:** Subject to and in consideration of the obligations of Relator and the State of Illinois in this Consent Decree, MIDI, as well as its current and future parents, subsidiaries, successors, affiliates, directors, executives, officers, managers, employees, attorneys, agents, assigns, transferees and/or heirs, fully and finally release Relator from claims or causes of action arising out of or relating to the Covered Conduct up to the date this Consent Decree is entered by the court.

8. **Binding Agreement:** This Consent Decree shall be binding upon, and its benefits and obligations shall inure to, MIDI and its respective representatives, successors and assigns, as well as the People's and the Relator's respective representatives, successors and assigns, heirs, administrators and executors as the case may be.

9. **Representations:** The representations made by the Parties herein as part of this Consent Decree are necessary to this settlement and agreement.

10. **Waiver of Statute of Limitations:** MIDI waives any defense based upon a statute of limitations, laches or estoppel for any claim that the Attorney General of the State of Illinois may bring in the future for any lease arrangement or similar arrangement as described above in paragraph 4 that MIDI has not disclosed to the Attorney General of the State of Illinois at the time of having entered into this Consent Decree.

11. **Severability:** If any portion, clause, phrase or term of this Consent Decree is later determined by a court of law to be invalid or unenforceable, for whatever reason, those provisions shall be severed from the remainder of this Decree only if and to the extent agreed upon by the Parties.

12. **Non-Admissibility of Consent Decree:** This Consent Decree shall not be offered into evidence or otherwise admissible in any court of law, administrative proceeding or any other judicial or administrative tribunal of any kind or nature, except with regard to (i) any dispute that may arise relating to the execution or enforcement of the Consent Decree itself and as provided for herein, and (ii) any dispute regarding MIDI's alleged insurance coverage for the conduct alleged by the State, including but not limited to the pending insurance coverage dispute captioned as "*Illinois Union Insurance Company v. MIDI, LLC, et al*, Case Number 07 CH 27453, pending in the Circuit Court of Cook County, Illinois, provided that the Consent Decree shall not be admissible under any circumstances as evidence of, or otherwise to be used to show, any alleged wrongdoing or improper conduct by MIDI.

13. **Binding Authority:** The signatories below acknowledge that they have the lawful authority to bind the parties for whom they are signing to the terms of this Consent Decree as herein represented. This Consent Decree may be executed in any number of identical counterparts, any of which may contain the signatures of fewer than all signatories and all of which together shall constitute a single agreement.

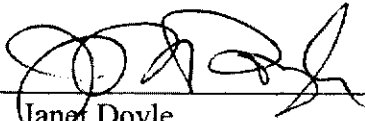
14. **Counterparts:** This Consent Decree may be signed in counterparts, each of which, when so executed and delivered to the other parties, shall be deemed an original, but such counterparts shall together constitute but one and the same instrument. Facsimile and other electronically transmitted signatures are valid and binding. The Consent Decree shall be deemed fully executed on the date upon which it has been executed by all parties hereto.

15. **Entire Agreement:** This Consent Decree represents the entire agreement between and among the Parties. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties hereto concerning the subject matters hereof are contained herein and superseded thereby. All prior and contemporaneous negotiations, possible and alleged agreements, representations, covenants and warranties, between and among the Parties,

concerning the subject matter hereof are merged herein. It is further understood that the Parties are not relying upon any matters outside the terms of this Consent Decree in entering into the Consent Decree.

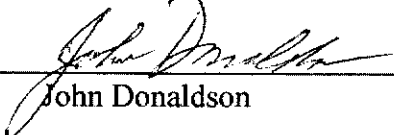
ACCEPTED AND AGREED TO BY:

THE PEOPLE OF THE STATE OF ILLINOIS,
by **LISA MADIGAN,**
Attorney General of Illinois

By: 
Janet Doyle
Assistant Attorney General

Dated: 1/13/2009

RELATOR JOHN DONALDSON

By: 
John Donaldson

Dated: 12/29/08

MIDI-Related Entities

By: _____
Richard Fried, signing:

Dated: _____

On behalf of MIDI, LLC; Open Advanced MRI of Chicago, LLC; Open Advanced MRI of Tinley Park, LLC; Open Advanced MRI of Crystal Lake, LLC; Open Advanced MRI of North Shore, LLC; Open Advanced MRI of Oak Brook, LLC; Open Advanced MRI of Wheaton, LLC; Open Advanced MRI of Schaumburg, LLC; and Open Advanced MRI of Deerfield, LLC, as Manager, MIDI, LLC.

On behalf of MIDI IIA, LLC; Open Advanced MRI of Deer Park, LLC; Open Advanced MRI of Skokie; and Gold Coast MRI at Washington Square, LLC, as Manager, MIDI IIA, LLC.

On behalf of MIDI II, LLC; Open Advanced MRI of Round Lake, LLC; Open Advanced MRI of Plainfield, LLC; and Open Advanced MRI of Lincoln Park, LLC, as Manager, MIDI II, LLC.

concerning the subject matter hereof are merged herein. It is further understood that the Parties are not relying upon any matters outside the terms of this Consent Decree in entering into the Consent Decree.

ACCEPTED AND AGREED TO BY:

THE PEOPLE OF THE STATE OF ILLINOIS,
by **LISA MADIGAN,**
Attorney General of Illinois

By: _____
Janet Doyle
Assistant Attorney General

Dated: _____

RELATOR JOHN DONALDSON

By: _____
John Donaldson

Dated: _____

MIDI-Related Entities

By: Richard Fried
Richard Fried, signing:

Dated: JANUARY 12, 2009

On behalf of MIDI, LLC; Open Advanced MRI of Chicago, LLC; Open Advanced MRI of Tinley Park, LLC; Open Advanced MRI of Crystal Lake, LLC; Open Advanced MRI of North Shore, LLC; Open Advanced MRI of Oak Brook, LLC; Open Advanced MRI of Wheaton, LLC; Open Advanced MRI of Schaumburg, LLC; and Open Advanced MRI of Deerfield, LLC, as Manager, MIDI, LLC.	On behalf of MIDI IIA, LLC; Open Advanced MRI of Deer Park, LLC; Open Advanced MRI of Skokie; and Gold Coast MRI at Washington Square, LLC, as Manager, MIDI IIA, LLC.
On behalf of MIDI II, LLC; Open Advanced MRI of Round Lake, LLC; Open Advanced MRI of Plainfield, LLC; and Open Advanced MRI of Lincoln Park, LLC, as Manager, MIDI II, LLC.	